IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 16983 of 2006(V)

OS.352/1997 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

VAIKUNDADAS NADAR, AGED 65 YEARS,
S/O. SANKARAN NADAR, RETD.GOVERNMENT SERVANT,
RESIDING AT CHAMAKKATTAYKALIL, PEROORKONAM,
THRIKANNAPURAM WARD, ARAMADA MURI, TAGORE ROAD,
THIRUMALA VILLAGE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.P.S.RAMESH KUMAR
SMT.ANNAMMA ABRAHAM

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY**
   THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **SATHYARAJ @ CHANDRAN,**
   AGED 49 YEARS, S/O. ELIYAS,
   MEKKECHARUVILAKATHU VEEDU, PEROORKONAM,
   TAGORE ROAD, THIRUMALA VILLAGE,
   THIRUVANANTHAPURAM.

BY ADV. SRI.S.V.PREMAKUMARAN NAIR)
SRI.R.T.PRADEEP) for R2
BY GOVERNMENT PLEADER SMT. R.BINDU for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT DTD. 30/08/2003 OF THE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM.

EXT.P2: COPY OF THE EXT.C2 REPORT MARKED IN EXHIBIT P1 CASE.

EXT.P3: COPY OF THE COMMISSIONER APPLICATION FILED BY THE DEFENDANT IN EXT.P1 SUIT, DTD. 4/08/2003.

EXT.P4: COPY OF THE COMMISSION REPORT FILED BY THE ADVOCATE S.HARICHANDRAN DTD. 11/08/2003 IN EXT.P1 SUIT.

EXT.P5: COPY OF THE PETITION AS I.A.NO.401/2003 FILED BY THE DEFENDANT IN EXT.P1 CASE, DTD. 23/01/2004.

EXT.P6: COPY OF THE OBJECTION FILED BY THE PLAINTIFF TO EXT.P5 APPLICATION DTD. 26/02/2004.

EXT.P7: COPY OF THE REPORT DTD. 6/01/2005 FILED BY ADVOCATE HARICHANDRAN BEFORE THE HON'BLE SUB COURT, THIRUVANANTHAPURAM.

EXT.P8: COPY OF THE ORDER OF THE PRINCIPAL SUB COURT, TVM IN I.A.NO.401/2004, IN EXT.P1 SUIT, DTD. 12/01/2006.

/TRUE COPY/

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 16983 OF 2006

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Dated this the 13th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P8 order. That was an application filed by the defendant to the effect that a wall has been constructed as per the decree and therefore the decree should be considered to be completely satisfied. Now, it is challenged to the effect that it is not done in conformity with the decree and therefore an enquiry has to be conducted into that and further the decree holder has filed an execution petition for implementation of the decree.

2. A perusal of the decree passed by the Court below would reveal that the defendant is directed to put up a randum rubble mansonary retaining wall along the western boundary of plaint A schedule at the eastern extremity of plaint B schedule with the specifications given in Ext.C2 for the same within nine months and on failure to do so the plaintiff is allowed to put up a retaining wall with the above

specifications and realise the costs if it amounting to Rs.4,88,285/- from the defendant. According to the defendant he has filed an application before Court and with the aid and assistance of the expert Commissioner the work has been completed and as no objection had been filed, according to the lower Court, the matter has been closed. One has to hold that the Court has to satisfy its conscience that the decree passed by the Court is implemented in the true spirit and in totality, on satisfaction of the same, the Court can close the matter.

3. Now the learned counsel for the writ petitioner submits that the specifications and directions in the judgment had not been properly complied with and if the matter is closed without looking into the same it will cause hardship to him and therefore he requests for a chance to put forward his contention in the matter. Whatever it may be, the Court has to enter into a finding that the work is done in accordance with the decree. If the decree holder feels that it is not done properly a chance can be given to

him to put forth his contention and also the defendant may be permitted to let in evidence to show that it had been done in conformity with the decree. After allowing both sides to adduce evidence and if it is appropriate and if necessary an enquiry has to be conducted and the Court can come to a conclusion regarding the fact that whether the decree is executed in the true spirit as the law contemplates. Therefore, the order under challenge is set aside and the Court below is directed to give an opportunity to the plaintiff in the suit to adduce evidence in support of his contention and also the defendant to submit his contention before disposing of the matter. Till a decision is taken in this I.A. the executing Court is not to proceed with the E.P. filed by the plaintiff in this case. The parties are directed to appear before Court on 30.8.2007.

M.N. KRISHNAN, JUDGE.

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